

Summary of HB575 from 2009 Legislature

Options for Addressing Beneficial Use Permitting of Coal Bed Methane Water

Prepared by Joe Kolman, Research Analyst
For The Water Policy Interim Committee, March 2010

Introduction

At its January 2010 meeting, the WPIC directed staff to provide a summary of HB575, as well as some options for addressing the issues raised by that legislative proposal.

HB575 as introduced

Create and define the term "production water" - water the volume of which is dependant on oil or gas withdrawals regulated by the Board of Oil and Gas Conservation.

Allow a temporary water use permit from DNRC for production water. Require that production water be used for stock water, managed irrigation, dust suppression, or domestic use.

The beneficial use application would be reviewed in the same way as an application to use surface or ground water except that the point of diversion would be the pipeline, pond, pit, or other facility holding production water.

In DNRC rules, a point of diversion is the location or locations where water is diverted from the source of supply. The source of supply is the specific surface or ground water source from which water is diverted for a beneficial use. (36.12.101, ARM).

For example, the point of diversion for a surface water source is the place where it leaves a river. For a well, the point of diversion is place where the water leaves the ground. The source of supply would be the river or an aquifer. The point of diversion and the source of the water supply are important in determining the legal availability of the water proposed for appropriation. This version of HB575 would create a unique permit where the point of diversion from which the DNRC analyzes legal availability of the water is stated in statute.

HB575 as introduced did not stipulate the source of supply.

Permit expires when the well ceases oil or gas production.

Law would have applied to permits with DNRC pending as of date of passage and approval, as well as those filed after law enacted.

Version passed by Legislature

Struck everything after the enacting clause in bill as introduced.

Eliminated in existing law the term "ground water" as it referred to water produced in association with a coal bed methane well. Stated such water is "water."

Created a temporary water use permit from DNRC for water produced in association with CBM. Limited use of water to stock water, managed irrigation with no return flow to surface water, dust suppression and other industrial uses, or domestic use.

The beneficial use application would be reviewed in the same way as an application to use surface or ground water except that HB575 stipulated that the "source of the appropriation" would be surface water in the a pipeline, pond or other facility that holds water produced in association with CBM. It further stipulated that the point of diversion would be a specific place where water is diverted from the pipeline, pond or other facility. This version of HB575 would create a unique permit where the point of diversion and the source of supply from which the DNRC analyzes legal availability of the water are stated in statute.

Applied to permits pending before effective date of the act and those applied for after the effective date; however, no permits could be issued after June 30, 2011. Permits expire when beneficial use ceases or CBM production ceases.

Appropriations approved under the temporary permits could not exceed a total combined volume of 2,000 acre feet a year.

Required the DNRC and the Board of Oil and Gas Conservation to study the effects on ground water of CBM production and the appropriate uses of CBM production water.

Made money from CBM protection account available on passage and approval instead of July 2011 for CBM development damages. Increased compensation limit from account from \$50,000 to \$150,000. Noted that water right holders affected by the use of water under a temporary permit are eligible for compensation from the CBM Protection Program.

Extended the distribution of 1.23% of the state share of oil and gas revenue to the coal bed methane protection account after FY 2011, currently set to expire. (At the time, it was estimated that would continue to add more than \$1 million a year to the account).

Proposed floor amendment (Failed)

Require certification from the MBOGC that the withdrawal from the ground of water associated with coal bed methane production does not adversely affect senior water rights.

Veto Summary

Issuance of permit would not adequately protect senior water right holders.

Changing ground water into surface water through legislation circumvents requirements of Water

Use Act. Bill fails to reconcile the conflict between the extraction of water in the CBM process and senior water rights.

An applicant for the beneficial use of CBM water is not unlike other permit applicants. All must show that existing water rights are not being adversely affected, or they must devise long-term mitigation plans that will provide replacement water during and after CBM production.

Options

1. Adopt either version of HB575.
 - A. Revise CBM protection program.
 - B. Revise water well mitigation requirements.
2. LC1031-2009 (not introduced).
 - A. Issue 2-year temporary beneficial use permit for Powder River Basin wells.
 1. No notice required. No objections allowed. No adverse effect analysis.
 2. Well meters required. Results reported to DNRC.
 - B. Renewal of temporary permit subject to all permitting provisions, including adverse effect.
3. Require CBM wells undergo same evaluation for adverse effect as other applications.
 - A. Eliminate or revise CBM protection program.
 - B. Eliminate or revise water well mitigation requirements.
4. Create an exemption (temporary permit) for beneficial use of CBM water. (Similar to exempt well, stock water exemptions in 85-2-306).
 - A. Revise CBM protection program.
 - B. Revise water well mitigation requirements.
5. Allow exemption based on specific criteria.
 - A. Well depth.
 - B. Distance from surface water.
 - C. Defined areas where the withdrawal of ground water will not within 100 years deplete the flow of a natural stream at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal.
 - C. Other?

CI2255 0055jkea.